



CITY OF COTTLEVILLE, MISSOURI

TWO YEARS ENDED DECEMBER 31, 1998

**From The Office Of State Auditor  
Claire McCaskill**

Report No. 99-19  
March 24, 1999

**AUDIT REPORT**



Office Of The  
State Auditor Of Missouri  
Claire McCaskill

Some problems were discovered as a result of an audit conducted by our office in response to the request of petitioners from Cottleville, Missouri.

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**NOTE: Recommendations, as well as responses from the city, which correspond with the findings below are included in the audit.**

During our review of Cottleville's Board of Aldermen meetings, especially closed meetings, we noted some of the following concerns. Formal written minutes are not maintained for closed meetings. **Although minutes for closed meetings are not specifically required by law, minutes constitute the record of proceedings of the Board of Aldermen. Formal written minutes for closed meetings result in a better record of city transactions, proceedings, and decisions.** In addition, minutes help the city demonstrate that closed discussions or business relate to the specific reason announced for closing the meeting pursuant to the Sunshine Law which applies to public meetings.

Furthermore, the board minutes and the meeting agendas do not document the specific reasons for going into a closed session. The tentative agenda and the minutes normally list litigation, real estate transactions, and personnel issues as the reason to go into closed session. **While the board normally states three general reasons for going into closed session, the specific reason for going into closed session is not documented.** (See the city's response on page 12)

In August 1997, the city entered into a loan agreement with the Mayor's brother. The Mayor's brother agreed to loan, **interest free**, such sums of money to the city as the city may request during the years 1997 through 2000, not to exceed \$500,000. In February 1998, the city borrowed \$284,295 through this agreement to finance the purchase of the property to be used to build a city hall. This loan was entered into without a vote of the city taxpayers.

**Article VI, Section 26(c), of the Missouri Constitution allows cities to incur debt by bond issue only after approval of two-thirds of the qualified electors voting thereon.** City officials indicated that before the money was borrowed, legal advice was obtained and since the borrowed amount was less than the total estimated revenues for 1998, plus the unencumbered balance from the previous year, the loan was legal. However, much of the city's balance and anticipated revenue was already obligated for 1998. (See the city's response on pages 19 & 20)

YELLOW SHEET

The city paid an engineering firm approximately \$302,497 and \$209,174 for the years ended December 31, 1998 and 1997, respectively. This engineering firm designates an employee to serve as “*City Engineer*” for the city and provides services by other employees as needed. The city entered into a written agreement with this firm on December 18, 1986, which establishes various compensation schedules for the services to be provided. The city entered into several additional contracts with this firm during 1997 and 1998 for large highway/street projects. The city did not solicit proposals for these engineering contracts.

We recommended that the city solicit proposals for engineering services in accordance with state law and ensure payments to the engineering firm comply with the written contract. **(See the city’s response on page 18)**

CITY OF COTTLEVILLE, MISSOURI

TABLE OF CONTENTS

	<u>Page</u>
STATE AUDITOR'S REPORT .....	1-2
HISTORY AND ORGANIZATION .....	3-5
MANAGEMENT ADVISORY REPORT .....	6-27
SUMMARY OF FINDINGS .....	7-8

<u>Number</u>	<u>Description</u>	
1.	Board Meetings, Minutes, and Policies .....	9
2.	City Ordinances and Resolutions .....	12
3.	Disbursements .....	14
4.	Loan Agreement .....	19
5.	Receipt Procedures .....	21
6.	Interest on Highway Funds .....	23
7.	Municipal Court Division .....	24



**CLAIRE C. McCASKILL**  
**Missouri State Auditor**

To the Honorable Mayor  
and  
Members of the Board of Aldermen  
City of Cottleville  
Cottleville, Missouri 63338

The State Auditor was petitioned under Section 29.230, RSMo, to audit the city of Cottleville, Missouri. Our audit of the city included, but was not limited to, the two years ended December 31, 1998. The objectives of this audit were to:

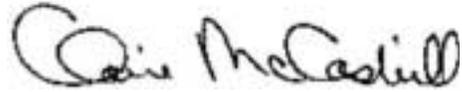
1. Perform procedures we deemed necessary to evaluate the petitioners' concerns.
2. Review compliance with certain constitutional provisions, statutes, ordinances, and attorney general's opinions as we deemed necessary or appropriate in the circumstances.
3. Review certain management practices which we believe could be improved.

Our audit was made in accordance with applicable generally accepted government auditing standards and included such procedures as we considered necessary in the circumstances. We also reviewed board minutes, city policies and ordinances, and various city financial records.

Our audit was limited to the specific matters described above and was based on the selective tests and procedures considered appropriate in the circumstances. Had we performed additional procedures, other information might have come to our attention which would have been included in this report.

The accompanying History and Organization is presented for information purposes. This information was obtained from the city and was not subjected to auditing procedures applied during our audit of the city.

The accompanying Management Advisory Report presents our findings and recommendations arising from our audit of the City of Cottleville, Missouri.

A handwritten signature in black ink, reading "Claire McCaskill". The signature is written in a cursive, flowing style.

Claire McCaskill  
State Auditor

January 13, 1999

## HISTORY AND ORGANIZATION

CITY OF COTTLEVILLE, MISSOURI  
HISTORY AND ORGANIZATION

The city of Cottleville is located in St. Charles County. It was incorporated as a village in 1853, and became a fourth-class city on August 4, 1992. The population in 1990 was 453. The city government consists of a mayor and four-member Board of Aldermen. The four members are elected for two-year terms, one from each of the two wards each year. The mayor is elected for four years, presides over the Board of Aldermen, and votes only in the case of a tie. The Mayor, Board of Aldermen, and other principal officials at December 31, 1998, were:

<u>Elected Officials</u>	<u>Term Expires</u>	<u>Compensation Paid for the Year Ended December 31,</u>	
		<u>1998</u>	<u>1997</u>
Stephen Kochanski, Mayor and City Administrator	2001	\$ 5,434	6,000
Rex Burlison, Alderman	2000	0	0
Donald Buchheit, Alderman	2000	0	0
Michael West, Alderman (1)	1999	0	0
Robert Hendry, Alderman	1999	0	0

(1) Resigned in December 1998. A replacement has not yet been appointed.

Other Principal Officials

Claude C. Knight, Municipal Judge	1,600	1,600
Sandra S. Barklage, City Clerk/Court Clerk	15,000	12,000
Dorothy Kane, Treasurer	8,454	8,400
Scott Lewis, Police Chief	38,654	26,400
Charles Niedner, City Attorney	32,245 (2)	27,428
Paul Lorton, City Engineer	302,497 (3)	209,175
Michael Sommers, CPA, Budget Officer and Accountant	21,635 (2)	17,785

(2) Paid on a contract basis.

(3) These payments were made to George Butler Associates (GBA) who employs Mr. Lorton. GBA is paid on a contract basis.

The city employs approximately 7 full-time and 2 part-time employees.

Assessed valuation and tax rate information are as follows:

<u>ASSESSED VALUATION</u>	<u>1998</u>	<u>1997</u>
Real Estate	\$ 14,744,206	12,682,588
Personal Property	2,909,876	2,462,505
Total	\$ <u>17,654,082</u>	<u>15,145,093</u>

TAX RATES PER \$100 ASSESSED VALUATION

	<u>1998</u>	<u>1997</u>
General Fund	\$.47	.47

The city also has the following sales taxes; rates are per \$1 of retail sales:

	<u>Rate</u>	<u>Expiration</u>
General	.01	<u>Date</u>
		None

MANAGEMENT ADVISORY REPORT

CITY OF COTTLEVILLE, MISSOURI  
SUMMARY OF FINDINGS

1. Board Meetings, Minutes, and Policies (pages 9-12)

Board minutes are not signed by the City Clerk or the Mayor and minutes are not prepared for closed meetings of the board. The board minutes and the meeting agenda did not document the specific reasons for going into closed session, and board minutes did not always contain a record of votes taken and members in attendance. Minutes were not prepared for the special meeting held with the city of St. Peters. Notice, including a tentative agenda, was not posted for some meetings. Copies of tentative agendas are not maintained as official records of the city, and agendas did not include all ordinances and resolutions to be considered by the board. The city has not formally established a policy regarding access to city records. The minutes of a board meeting in which the mayor's brother was an interested party do not indicate the mayor did not preside.

2. City Ordinances and Resolutions (pages 12-14)

Improvement is needed in the organization of the city's ordinances. Three ordinances passed by the Board of Aldermen did not receive the required number of votes. The city does not permit video recording of meetings unless two-thirds of the members vote in favor of allowing such recording.

3. Disbursements (pages 14-18)

Various concerns were noted including the lack of bid documentation, the lack of written contracts, the lack of appraisals for real estate purchases, and disbursements for which a public purpose was not demonstrated or documented. In addition, the Board of Aldermen does not approve all disbursements and did not obtain proposals for engineering services. Payments to the city's accounting firm did not comply with the written agreement.

4. Loan Agreement (pages 19-20)

The city entered into a loan agreement with the mayor's brother to finance the purchase of property without a vote of the city taxpayers.

5. Receipt Procedures (pages 21-23)

Checks and money orders received are not restrictively endorsed immediately upon receipt. In addition, rezoning application deposits do not appear to be handled in accordance with city ordinances. The city has not established a separate fund or separate accounting for waiver fees received, has not established who is responsible for collecting this fee or when it is to be collected, and does not document its reasons for granting the waivers. The Board of Aldermen sometimes waives or lowers the escrow amounts required by developers.

6. Interest on Highway Funds (pages 23-24)

The city has transferred \$38,974 of interest money earned on highway project monies to the city general fund.

7. Municipal Court Division (pages 24-26)

The Court Clerk does not prepare monthly open-items listings of bonds held in the bond account. The duties of receiving, recording, and depositing fine and court cost monies collected by the municipal division are not adequately segregated. The court does not account for the numerical sequence of receipt slips issued by the police department. No reconciliation is performed between the composition of receipt slips issued by the court and the monies deposited. The court dockets do not always indicate the disposition of all cases. Fines and court costs assessed did not agree to the fee schedule for file cases reviewed. Neither the police department nor the court adequately accounts for the numerical sequence and ultimate disposition of tickets issued.

CITY OF COTTLEVILLE, MISSOURI  
MANAGEMENT ADVISORY REPORT

**1. Board Meetings, Minutes, and Policies**

- A. Board meeting minutes are prepared by the City Clerk; however, they are not signed by the City Clerk or Mayor. In addition, some meeting minutes were not approved by the Board of Aldermen. The minutes should be prepared and signed by the City Clerk and approved by the board and signed by the mayor immediately upon approval by the board to provide attestation that the minutes are a correct record of the matters discussed and actions taken during the board meetings.
- B. During our review of closed meetings, we noted the following concerns:
- 1) Formal written minutes are not maintained for closed meetings. Although minutes for closed meetings are not specifically required by law, minutes constitute the record of proceedings of the Board of Aldermen. Formal written minutes for closed meetings result in a better record of city transactions, proceedings, and decisions. In addition, minutes help the city demonstrate that closed discussions or business relate to the specific reason announced for closing the meeting pursuant to the Sunshine Law, Chapter 610, RSMo.
  - 2) The board minutes and the meeting agendas do not document the specific reasons for going into a closed session. The tentative agenda and the minutes normally list litigation, real estate transactions, and personnel issues as the reason to go into a closed session. In addition, one instance was noted where a reason was not specified.
- Section 610.021, RSMo, allows the board to close meetings to the extent the meetings relate to certain specified subjects, including litigation, real estate transactions, personnel issues, some competitive bidding issues, confidential or privileged communications with auditors, etc. Section 610.022, RSMo, requires a closed meeting, record or vote be held only for the specific reasons announced publicly at an open session. In addition, this law provides that public governmental bodies shall not discuss any other business during the closed meeting that differs from the specific reasons used to justify such meeting, record, or vote.
- C. The board minutes do not include sufficient detail of matters discussed and actions taken. The board minutes did not always include a description of resolutions passed. In addition, the minutes did not always contain information required by law, such as records of votes taken and members in attendance.

Complete and accurate minutes provide an official record of board actions and decisions. Section 610.020, RSMo, states that "the minutes shall include the date, time, place, members present, members absent, and a record of votes taken".

- D. On June 5, 1998, the Board of Aldermen held a special meeting with the city of St. Peter's Board of Aldermen. No minutes were prepared of this meeting. City officials indicate this was a social gathering of the two cities; however, both cities posted a notice and tentative agenda for this meeting.

Section 610.020, RSMo, requires minutes of open meetings to be taken by the public governmental body.

- E. During our review of notices of meetings, the following concerns were noted:

- 1) The city normally holds its regular board meetings on the first Thursday of each month, and a work session on the second Tuesday of each month. According to city officials, the work session is a continuation of the regular board meeting. Documentation that notice was given of the board meetings could not be located for several meetings. The city's policy is to send the notice to the two local newspapers and to the post office and the local community college to be posted for regular meetings; however, notice is not always sent for work sessions. City personnel indicated the agenda from the regular meeting would still apply since the work session was a continuation of that meeting, and notice of the date and time was not posted since it was announced at the end of the regular meeting. In addition, the agenda was not posted at the college for several meetings due to a change in personnel at the college.
- 2) Copies of the tentative agendas are not maintained by the city attorney who is the official record custodian for the city. One of the petitioners asked to review agendas and the City Attorney indicated the city did not keep agendas as part of its official records. The City Clerk had a file of agendas, but apparently these were not made available to the petitioner.
- 3) Some ordinances and resolutions to be considered by the Board of Aldermen were not included on the tentative agendas posted. In order to allow citizens to voice their opinions on proposed ordinances and resolutions, they should be made aware of their consideration. The City Attorney indicated that he believed the law required tentative agendas only and that all ordinances and resolutions were not required to be included. The attorney indicated that the city is now trying to ensure all items are listed.

Section 610.020, RSMo, requires all public governmental bodies to give notice of their meetings at least twenty-four hours in advance through the news media or posting notice of the meeting. The notice is to include the time, date, and place of the

meeting, as well as the tentative agenda. In addition, the notice is required to be posted at the principal office of the city or the building in which the meeting is to be held. To document compliance, the City Clerk should document the date, time, and location the notice was posted and retain this with the minutes. In addition, the city officials should try to ensure the public is made aware of all proposed ordinances and resolutions by including them on the tentative agenda posted.

- F. The city has not formally established a policy regarding access to city records. The City Attorney, who serves as the official custodian of city records, has established some written rules for accessing the records; however, these rules have not been officially adopted by the Board of Aldermen.

Section 610.023, RSMo 1994, indicates that each public governmental body is to appoint a custodian who is to be responsible for the maintenance of that body's records and establishes guidelines for making city records available to the public. To ensure compliance with state law, the city should adopt formal policies regarding the location of city records, the persons responsible for maintaining each record, and procedures for citizens to request access to public records and how the city will handle these requests.

Written policies would establish procedures for the residents to follow and the cost for the requested information. In addition, written policies would help avoid misunderstandings regarding the availability of public city records.

- G. The mayor did not vote on the issue of whether to grant a conditional use permit allowing a telecommunications tower to be placed on property owned by the mayor's brother. In addition, the mayor and the aldermen indicated that the mayor did not preside over that portion of the Board of Alderman's meeting dealing with that issue. However, the minutes of the meeting did not reflect that the mayor did not preside over that portion of the meeting.

**WE RECOMMEND** the Board of Aldermen:

- A. Ensure minutes are approved for all meetings and require the City Clerk and Mayor to sign the board minutes to attest to the accuracy and completeness.
- B.1. Ensure minutes are prepared for all closed meetings.
  - 2. Ensure minutes and agenda state the specific reasons for going into a closed session, as required by state law.
- C. Ensure all significant discussions, actions taken, and information required by state law are included in the minutes.

- D. Ensure minutes are prepared, approved and maintained for all meetings, including special meetings.
- E. Post notices, with tentative agendas for all meetings of the board at the principal office of the city or the building in which the meeting is to be held and retain adequate supporting documentation to demonstrate that the board provided the proper notice and tentative agendas. In addition, the board should ensure all proposed resolutions and ordinances are reflected on the tentative agendas posted.
- F. Develop written policies regarding procedures to obtain access to, or copies of, public city records.
- G. Ensure the minutes of board meetings accurately reflect when the mayor is present but declines to preside. Such documentation is particularly important when an issue includes a relative of the mayor.

#### **AUDITEE'S RESPONSE**

- A. *The city will ensure that minutes are approved for all meetings. Although not required by law, the city will consider the Auditor's recommendation that the City Clerk and Mayor sign the minutes in addition to Board of Aldermen approval of the minutes.*
- B.1. *Minutes for closed session are not required by law. The city's Board of Aldermen does not take votes or make decisions in closed session. Such votes and decisions are reserved for open session. The city's minutes do reflect that discussions were held in closed session but that no decisions were made in closed session. No further minutes for closed session are required or necessary.*
- B.2. *The city has been in compliance with this legal requirement and the city will continue such compliance.*
- C.,D.  
E&G. *The city accepts these recommendations.*
- F. *The city does have a written policy regarding access to city records. Such policy is in the form of rules established by the custodian of records. The rule making authority of the custodian of records has recently been confirmed by ordinance.*

#### **AUDITOR'S COMMENT**

- B. The minutes of the meetings normally state the three general reasons for going into closed session. The specific reason for going into closed session is not documented.

A. Improvement is needed in the organization of the city's ordinances. The city's ordinances have not been codified, thus hindering the city's ability to locate specific ordinances. There were several ordinances missing from the official ordinance books. In addition, during our review of ordinances, we noted the following concerns:

1) We noted several ordinances which appear to be outdated:

- \* During the year ended December 31, 1998, the City Clerk/Court Clerk and the Treasurer were paid \$15,000 and \$8,454, respectively. City ordinance 159, dated June 3, 1993, established the annual salary of the city clerk/court clerk and the treasurer at \$10,800 and \$7,800, respectively. The City Clerk indicated the salary increases were approved by the board through their approval of the budgets each year, however, the ordinances have not been updated.
- \* Ordinance 14 provides for notice of special meetings of the board of aldermen to be posted at six locations throughout the city; however, several of these locations no longer exist.
- \* Ordinance 106 provides for the regular meeting of the board of aldermen to be held each Thursday of the month; however, the regular meeting of the board is held on only the first Thursday of each month.
- \* During the year ended December 31, 1998, the prosecuting attorney was paid \$100 per hour. City ordinance 36 established an hourly rate of \$60 per hour for the prosecuting attorney. The written contract with the city attorney/prosecuting attorney establishes an hourly rate of \$100 per hour, but the ordinance has not been updated.

2) The city has not adopted ordinances to address such items as personnel policies and salaries of the police officers.

Since the ordinances represent the legislation passed by the Board of Aldermen to govern the city and its residents, it is important that the city's ordinances be maintained in a complete, well-organized, and up-to-date manner. An index of all ordinances passed and repealed by the city could help keep track of additions and changes made to the city ordinances. Such items as compensation of city employees, and personnel policies and procedures, should be set forth in the ordinances to give taxpayers information on how the city is to be governed. Section 79.290, RSMo, requires the board of aldermen to fix the salaries of all city employees by ordinance.

- B. At least three ordinances were passed by the Board of Aldermen without the proper number of votes. Each of these ordinances passed with a vote of two yes and two absent. Section 79.130, RSMo, requires ordinances to be approved by a majority of all the members of the board of aldermen. Thus passage of an ordinance requires three favorable votes of the board, or in the case of a tie, the mayor can cast the third positive vote.
- C. City ordinance 282 indicates "video recording shall not be permitted of any meetings of the Board of Aldermen, Planning and Zoning Commission, Board of Adjustment or other public board or commissions of the City unless two-thirds of the members thereof present shall vote in favor of allowing such video recording". Attorney General's Opinion No. 151, 1995 to Wiggins, states that a city council does not have the authority to prohibit citizens from videotaping an open meeting in an unobtrusive manner. The city attorney indicated the board was made aware of this opinion and chose to leave the ordinance as it is.

**WE RECOMMEND** the Board of Aldermen:

- A. Update and codify the city's ordinances and ensure a complete set of ordinances is maintained. In addition, the board should pass ordinances to address such items as compensation of employees and personnel policies.
- B. Ensure the required number of positive votes is received for the passage of ordinances.
- C. Review city ordinance 282 and Attorney General's Opinion 151 with legal counsel and make necessary revisions.

**AUDITEE'S RESPONSE**

- A. *Although not required by law, the city intends to update and codify its ordinances as recommended when the city is financially capable of doing so. The city has investigated codification and has been advised that it will cost approximately \$7,000. Such expenditure of the taxpayers' money will have to be budgeted in a year when such funds are not required for critical public services such as police protection. The city will ensure that a complete set of ordinances is maintained. The city has recently updated its ordinances on compensation of employees as recommended. Although not required by law, the city will consider the recommendation that it pass ordinances on personnel policies.*
- B. *The city accepts this recommendation.*
- C. *An Attorney General's opinion does not constitute law in the State of Missouri. The city believes that its ordinance on this subject is in compliance with law. If, in the future, the*

*Missouri legislature or courts should require that videotaping be allowed without consent of the Aldermen, the city will of course comply with the law.*

**3.**

**Disbursements**

- A. The board minutes do not normally contain indication of board approval for disbursements, and the board does not normally review invoices before payment. A financial report, summarizing disbursements by fund and by classification, is prepared monthly by the budget officer for the preceding month's activities; however, this report is not seen and approved by the board prior to the disbursements being made, and is not included with the official minutes of the board's meetings. City ordinance 137 authorizes the mayor to direct the treasurer to make disbursements not to exceed \$2,500 per month, and city ordinance 235 authorizes the mayor, city clerk, and treasurer to pay recurring expenses without approval of the board of aldermen. The mayor, city clerk, and treasurer are authorized to sign checks and the budget officer prepares the financial report and prepares the monthly bank reconciliation.

To adequately document the board's review and approval of all disbursements, a complete and detailed listing of bills should be prepared, signed or initialed by the board members to denote their approval, and retained with the official minutes. In addition, supporting documentation should be reviewed by the board or someone independent of the disbursement process before payment is made. Failure to properly review all invoices and supporting documentation, and to document authorization, increases the possibility of inappropriate disbursements occurring.

- B. City ordinance 362 requires formal competitive bids to be obtained for any proposed capital expenditure for the purchase of vehicles, material or construction labor having a cost in excess of \$5,000. The city's ordinance does not address disbursements which do not exceed \$5,000; however, city officials indicated they do obtain price quotes for large purchases. The need for price quotes appears to be determined on an item by item basis. Documentation was not available to ensure prices quotes were obtained for the following disbursements:

<u>Item</u>	<u>Amount</u>
Radio equipment	\$ 4,632
Computer	1,937

Formal bidding procedures for major purchases would provide a framework for economical management of city resources and help ensure the city receives fair value by contracting with the lowest and best bidders. Competitive bidding also helps ensure all parties are given equal opportunity to participate in the city's business. Not only can bids be obtained by telephone quotation, but bids can also be obtained by written quotation, by sealed bid, or by advertised sealed bid. Various approaches are appropriate, based on dollar amount and type of purchase. Whichever approach

is used, complete documentation should be maintained of all bids received and reasons noted why the bid was selected.

- C. The city paid an engineering firm approximately \$302,497 and \$209,174 for the years ended December 31, 1998 and 1997, respectively. This engineering firm designates an employee to serve as "City Engineer" for the city and provides services by other employees as needed. The city entered into a written agreement with this firm on December 18, 1986, which establishes various compensation schedules for the services to be provided. The contract provides a schedule of fees for specific services to be provided such as zoning applications, site plan review, etc. and provides compensation for optional services and construction inspections for the time and expense actually spent at the rates established in the exhibit attached to the contract. During our review of payments to this engineering firm, we noted the following concerns:

- 1) The city entered into several additional contracts with this firm during 1997 and 1998 for large highway/street projects. The city did not solicit proposals for these engineering contracts.

Sections 8.289, and 8.291 RSMo, provide that when obtaining engineering services for any capital improvement project, at least three highly qualified firms should be considered. The firms should be evaluated on specified criteria including experience and technical competence, capacity and capability of the firm to perform the work in question, past record of performance, and the firm's proximity to and familiarity with the area in which the project is located.

- 2) Several of the contracts for the highway/street projects are simply for lump sum amounts and the others are for time and expenses actually spent plus a fixed fee. It would appear difficult for the city to determine if these amounts are reasonable without obtaining proposals from other firms. In addition, it would appear these contracts would be considered additional services as designated under the original contract and should have been compensated at the rates established by that contract. This contract does not appear to allow for an additional fixed fee. Engineering costs represented from 15 to 21 percent of the total costs of the projects.

In addition, the hourly rates currently charged by the engineering firm for the additional services did not comply with the original contract. The City Engineer indicated these rates are the "standard hourly charge out rates" established by their firm each year; however, the contract does not appear to provide for this schedule to be updated annually.

The city should ensure the payments to the engineering firm comply with all provisions of the contract agreement.

- D. The city did not have formal written agreements with some companies and individuals providing services. During the two years ended December 31, 1998, the following amounts were paid for various services without a contract or adequate written documentation:

Construction of walking trail	\$10,000
Special counsel	5,299
Sewer study	3,239

Formal written agreements are necessary to document each party's duties and responsibilities and to prevent misunderstandings. Section 432.070, RSMo, requires political subdivisions' contracts be in writing.

- E. In February 1998, the city purchased nine acres of land on which to build a city hall and police station for approximately \$294,000. The city did not advertise that it was looking for available land to purchase and the city purchased the property without obtaining an independent appraisal. As a result, there is less assurance the price paid for the property was reasonable or represented the fair value of the property.
- F. The city paid an accounting firm approximately \$21,635 and \$17,800 for the years ended December 31, 1998 and 1997, respectively. The city entered into written agreements with this firm each year. The agreements provide total amounts to be paid for specific services (budgets, bank reconciliations, etc.), and an hourly rate for additional services not specified in the agreement. The amounts paid for the two years ended December 31, 1998, did not agree to the written agreements for the specific services. In addition, the agreements did not specify the hourly rate to be charged for the specific services, and the invoices from the firm did not show the hours worked. It would appear difficult for the city to determine if these amounts are accurate or hours reasonable without reviewing the hours worked on each area of service.

The city should ensure the payments to the accounting firm comply with the provisions of the agreements. In addition, the city should require the accounting firm to include the number of hours billed for each type of service and review these hours for reasonableness.

- G. During the two years ended December 31, 1998, approximately \$211 of disbursements were made for which a public purpose was not demonstrated or documented. Monies were spent on flowers for illnesses and condolences, and a donation to a scholarship fund.

The disbursements do not appear to be necessary and prudent uses of public funds.  
**WE RECOMMEND** the Board of Aldermen:

- A. Ensure the approval of all disbursements is adequately documented by including a listing of all approved disbursements in the board minutes, and requiring supporting documentation be reviewed by the board or someone independent of the disbursement process before payment is made.
- B. Consider expanding their current bid policy to include less formal bid requirements for various price levels under the \$5,000 currently established.
- C. Solicit proposals for engineering services in accordance with state law and ensure payments to the engineering firm comply with the written contract.
- D. Enter into written agreements for all services.
- E. Obtain an independent appraisal for any property being considered for purchase.
- F. Ensure payments to the accounting firm comply with the written agreement. In addition, the Board of Aldermen should require the accounting firm to document the number of hours being billed for each service, and ensure these hours are reviewed for reasonableness.
- G. Ensure disbursements are a necessary and prudent use of public funds.

**AUDITEE'S RESPONSE**

- A. *Disbursements-Most of the expenditures paid by the City Treasurer are covered under City Ordinances 137 and 235. To have bills pre-approved and timely paid is difficult to comply with. However, the city will take action to comply as best as it can under the circumstances.*
- B. *The law does not require a fourth class city to engage in competitive bidding. None the less, the city has enacted a competitive bid ordinance. Therefore, the city has already done more than is required by law. The city will consider the recommendation that its voluntarily imposed bidding ordinance be made even more stringent, although that is not required by law.*
- C&D. *The city accepts these recommendations.*
- E. *Although not required by law, the city will consider this recommendation.*
- F. *Disbursements: The annual agreement provides for total amounts to be paid for specific services as outlined in the annual engagement letter provided that certain documents are received in a complete manner and on a timely basis. An hourly rate for "additional services" is specified in the agreement at a billing rate of \$75 per hour. The additional services as noted in the engagement letter for 1997 and 1998 refers to all additional services and does not limit itself to services covered or not covered in the agreement. It is the intention that all additional services are to be billed at \$75 per hour. Additional services*

*have the hours noted in most occasions and when they are not, the hours can be derived by dividing the dollar amount by \$75 an hour.*

*On future billings all line items will give a notation as to hours being billed.*

- G. *The city does not agree that its minuscule expenditures for sympathy cards and flowers for seriously ill or deceased employees is an unnecessary or imprudent use of public funds.*

<b>4. Loan Agreement</b>
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In August 1997, the city entered into a loan agreement with the Mayor's brother. The Mayor's brother agreed to loan, interest free, such sums of money to the city as the city may request during the years 1997 through 2000, not to exceed \$500,000. In February 1998, the city borrowed \$284,295 through this agreement to finance the purchase of the property to be used to build a city hall. This loan was entered into without a vote of the city taxpayers.

Article VI, Section 26(a), of the Missouri Constitution states:

*No county, city, incorporated town or village, school district or other political subdivision of the state shall become indebted in an amount exceeding in any year the income and revenue provided for such year plus any unencumbered balances from previous years, except as otherwise provided in this constitution.*

Article VI, Section 26(c), of the Missouri Constitution allows cities to incur debt by bond issue only after approval of two-thirds of the qualified electors voting thereon. City officials indicated that before the money was borrowed, legal advice was obtained and since the borrowed amount was less than the total estimated revenues for 1998 plus the unencumbered balance from the previous year, the loan was legal. However, much of the city's balance and anticipated revenue was already obligated for 1998. Additionally, extending the contract over a period of 20 years without the right of withdrawal obligates the city for future periods. The city is obligated to make \$14,215 in annual debt payments. This transaction appears to violate the intent of the Missouri Constitution on legal indebtedness absent a vote of city taxpayers.

**WE RECOMMEND** the Board of Aldermen not enter into such long-term debt without the vote of city taxpayers.

**AUDITEE'S RESPONSE**

*The City disagrees with the State Auditor's legal conclusion that the city's loan agreement appears to violate the intent of the Missouri Constitution. Although the State Auditor quotes Article VI Section 26(a) of the Missouri Constitution, set forth below, the State Auditor chooses to ignore the important clause of that Section which the city has shown in bold print.*

*"No county, city, incorporated town or village, school district or other political subdivisions of the state shall become indebted in any amount exceeding in any year the income and revenue provided for such year plus any unencumbered balances from previous years, except as otherwise provided in this constitution."*

*The State Auditor and the city agree that the last phrase "... except as otherwise provided in this constitution" means a vote of the people in this context.*

*In the city's opinion, the bolded phrase sets a bench mark for the amount a municipality may borrow without a vote of the people. The reason for this is two fold. First, it sets a limit on how much the city's Board of Aldermen can cause the city to go into debt on their own. Any debt in excess of that bench mark should be approved by a public vote before it is incurred. Second, it allows the Board of Aldermen to incur debt below that bench mark without having to go through the time consuming and expensive (about \$7,000) process of submitting the proposed debt to the voters at an election . This seems clear and reasonable.*

*However, the State Auditor's opinion on this topic infers additional requirements concerning budgets and expenditures that do not appear in Article VI Section 26(a) of the Missouri Constitution.*

*During a conference, the State Auditor's representatives verbally informed the city that the city had failed to comply with the intent of Section 26(a) because, in the opinion of the State Auditor, a public vote is required for a municipality to borrow any money if that municipality has budgeted its projected revenues and unencumbered balances for expenditure, regardless of the italicized phrase in section 26(a). The city asked the State Auditor's representatives if this would mean that a municipality could borrow money without a public vote only if the municipality had a surplus of money at least equal to the amount to be borrowed. The State Auditor's representatives concurred with that extension of their logic. The city then asked the State Auditor's representatives if it would be fiscally imprudent for a municipality to borrow money and pay interest when it already had a surplus of that amount of money. The State Auditor's representative replied that such an action would seem to be imprudent. The foregoing conversation demonstrates the illogic of the State Auditor's position. For the State Auditor's opinion to be correct, one would have to assume that the drafter's of Section 26(a) intended either that (1) municipalities should only borrow money without a vote when they don't need the money since they already have it, or (2) the italicized part of Section 26(a) inserted for no reason and is meant to be ignored. The illogic of those assumptions is underscored by the fact that nowhere in Section 26(a) is there any reference to budgets or expenditures. They are simply not part of the calculation set forth in Section 26(a). The city believes that the city's interpretation of Section 26(a) is more logical than the State Auditor's interpretation. Therefore, the city respectfully disagrees with the State Auditor's legal conclusion.*

### **AUDITOR'S COMMENT**

The State Auditor's office has decades of experience with Article VI, Section 26(a) of the Missouri Constitution because the State Auditor is charged with registering local municipal debt that is authorized under the various subsections of this provision. The only type of financial obligation a municipality may incur under this section without voter approval is one that can be paid out of current revenues or surplus. This allows municipalities to borrow without voter approval by issuing

tax anticipation notes that can be paid out of anticipated current revenues. If a note, obligation, or debt cannot be paid out of current revenues and surplus by year end, then the municipality has violated the constitution by incurring debt, i.e. spending more that it had to spend.

**5.**

**Receipt Procedures**

- A. Checks and money orders received are not restrictively endorsed immediately upon receipt. To reduce the risk of loss or misuse of funds, checks and money orders should be restrictively endorsed immediately upon receipt.
- B. Rezoning application deposits do not appear to be handled in accordance with City Ordinance 291, Section 2, which states:

*. . . applicants for rezoning shall henceforth be required to make a deposit of \$300 towards publication costs. Such deposit shall be used by the City to pay for the actual publication and processing expenses incurred by the City in publishing legal notices and processing such rezoning application. In the event that there is any sum remaining of said deposit after payment of actual publication and processing expenses, such sum shall be refunded to the applicant. In the event that such publications and processing expenses shall exceed the deposit by the applicant, the applicant shall be obligated and required to pay to the City such excess amount of actual publication and processing expenses as a prerequisite for the granting of such rezoning application.*

City officials indicated they do not monitor these costs. The \$300 is treated as a fee for the rezoning application and deposited to the general fund. The Board of Aldermen should develop procedures to monitor the publication and processing expenses affiliated with the zoning application, refund any excess deposits, and collect any excess expenses as required by their ordinance or revise the ordinance.

- C. During the three years ended December 31, 1998, the city deposited \$14,524 in waiver fees into the General Fund. City ordinance 52, Section 5.10(f) states:

*If requested by the Developer or by the Village of Cottleville, the City at its option, may waive the construction of a detention basin for the development. If the waiver is granted, the developer shall pay an amount equal to \$1,000 per acre for the tract of land the development is to occur on.*

City ordinance 49 indicates this money is to be used in a public improvement fund for maintenance and construction of public improvements

During our review of these fees, we noted the following concerns:

- 1) The city has not established a separate fund or separate accounting for these receipts and related disbursements.

To ensure compliance with city ordinance, the city should establish a separate fund or accounting of receipts of waiver fees and ensure these receipts are used only for the purposes allowed by city ordinance.

- 2) As of December 31, 1998 the \$1,000 per acre had not been collected for one of the waivers granted by the Board of Aldermen in 1997. City officials indicated the city ordinance does not specify when this money is to be collected, and does not indicate who is responsible to ensure it is collected. The Mayor indicated the developers often wait until the development is complete to pay this money to the city and this development is not yet complete.

To ensure these fees are collected in accordance with the city ordinance, the Board of Aldermen should establish procedures to indicate to whom this fee should be paid and when the fee is due.

- 3) During our review of the two waivers granted during the two years ended December 31, 1998, we noted the city's reasons for granting this type of waiver were not documented in the minutes of the Board of Aldermen, or the City Engineer's files. The City Engineer indicated these waivers were granted due to the location of these properties. He indicated they were located near the flood plain, thus it would not be feasible to comply with the ordinance.

To ensure this waiver is applied fairly to all developers, the Board of Aldermen should ensure their reasons for granting the waiver are fully documented.

- D. City ordinance 134 requires the developer to post a lenders or escrow agreement insuring or guaranteeing the stabilization and revegetation of the site. The August 21, 1997, minutes indicate the board waived this escrow agreement for a local not-for-profit organization. According to city personnel, the escrow agreement was waived because the work done involved only leveling and seeding lots into playing fields. In addition, the city engineer, indicated the Board of Aldermen sometimes lowers the escrow amount required if the developer provides the city with an estimate of the cost of the revegetation of the site. City ordinance 134 does not establish a policy which allows the Board of Aldermen to waive or lower this requirement. In addition, the Board of Aldermen did not clearly reflect why this requirement was waived in this case.

To ensure this ordinance is applied fairly to all developers, the Board of Aldermen should establish a formal policy which indicates the conditions in which this

requirement will be waived or reduced, and ensure their reasons for granting the waiver are fully documented.

**WE RECOMMEND** the Board of Aldermen:

- A. Ensure checks and money orders are restrictively endorsed immediately upon receipt.
- B. Develop procedures to monitor the actual publication and processing expenses associated with each zoning application, to refund any excess deposit, and to bill developers for any excess expenses.
- C.1. Establish a separate fund or accounting of receipts of waiver fees and ensure these fees are used only for the purposes allowed by city ordinance.
  - 2. Establish procedures to indicate to whom and when the waiver fee should be paid.
  - 3. Ensure the reasons for granting waivers are fully documented.
- D. Establish a formal policy which specifies the conditions in which the escrow agreement required by city ordinance 134 will be waived or reduced, and ensure their reasons for granting the waiver are fully documented.

**AUDITEE'S RESPONSE**

- A. *Receipt procedures-Checks and money orders are being endorsed immediately upon receipt, even though not required by the statute.*
- B,C,  
& D. *The city accepts these recommendations.*

<b>6. Interest on Highway Funds</b>
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In December 1994, the city entered into a contract with St. Charles County to provide funding for a highway project. During the three years ended December 31, 1997, the city received \$1,087,500 from St. Charles County for this project. The county paid these monies to the city in monthly increments as stated in the contract. The city has invested these funds in certificates of deposit until the funds will be needed for the project. During the two years ended December 31, 1998, the city transferred \$38,974 of interest income earned on these investments to the city general fund.

The contract does not specify how the interest on these funds is to be handled. City officials indicated the interest was transferred in an attempt to recoup some of their administrative expenses; however, the contract does not provide for the city to claim their administrative expenses. County officials indicated they did not intend for the city to keep the interest on

these funds, and, that if the city required additional funds for this project, they would require them to first use the interest that should have accumulated.

While the city has not violated any contract provisions, the transfer of these interest monies could create future problems with the county regarding any additional funding for this project. The funds of the city are established as separate accounting entities to account for specific activities of the city. Generally accepted accounting principles require revenues and expenses associated with specific activities be reflected in the fund established to account for those activities. The city should reserve the interest funds with the highway monies until the completion of the project. The accumulated interest funds could then be used for any cost overages encountered.

**WE RECOMMEND** the Board of Aldermen require the City Treasurer to credit the interest on the highway funds to those funds.

**AUDITEE'S RESPONSE**

*Although not required by law or by contract with the St. Charles County Road Board, the city has segregated such interest and the city has assured the Road Board in writing that the interest will be accounted for.*

<b>7. Municipal Court Division</b>
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A. The Court Clerk does not prepare monthly open-items listings of bonds held in the bond account. We prepared a listing as of December 31, 1998, which indicated open items in excess of the bank balance by approximately \$600. This shortage appears to have been carried forward from a shortage noted in our prior audit.

Monthly open-items listings should be prepared and reconciled to the bank accounts to ensure proper accountability over open cases and ensure monies held in trust by the court are sufficient to meet liabilities.

B. During our review of fine and cost receipts, we noted the following concerns:

1) The duties of receiving, recording, and depositing fine and court cost monies collected by the municipal division are not adequately segregated. Currently, the Court Clerk performs all of these duties. To safeguard against possible loss or misuse of funds, internal controls should provide reasonable assurance that all transactions are accounted for properly and assets are adequately safeguarded. Since this is an office of one employee and proper segregation of duties cannot be achieved, at a minimum, there should be a documented independent comparison of receipt slips issued to amounts deposited. This review should include accounting for the numerical sequence of receipt slips issued, and reconciliation between the composition of receipt slips issued by

the court and the composition of monies deposited to the municipal court division bank account.

- 2) The police department accepts payments for fines and costs when the Court Clerk is unavailable. The police department issues a prenumbered receipt slip for all monies collected; however, the Court Clerk does not account for the numerical sequence of all police department receipt slips. To ensure all monies received by the police department are transmitted to the court, the numerical sequence of police department receipt slips should be accounted for properly, and the composition of receipt slips issued should be reconciled to the composition of monies transmitted.
- 3) The municipal court division accepts cash, checks, and money orders for the payment of fines and court costs. Receipt slips are issued by the clerk; however, no reconciliation is performed between the composition of receipt slips issued and the monies deposited. During our review, we noted a check which was deposited but was not receipted by the court and one deposit for \$20 less than the receipt slips issued.

To ensure receipts are deposited intact, the composition of receipt slips issued should be reconciled to the composition of deposits. This type of reconciliation would ensure the types of errors noted above are identified and corrected on a timely basis.

- C. The Court Clerk prepares a court docket which includes all cases commenced before the Municipal Judge; however, these court dockets do not always indicate the disposition of all cases. To ensure the proper disposition of all cases has been entered into the court records, the disposition of all cases should be recorded on the court docket and subsequently reviewed by the Municipal Judge.
- D. During our review, we noted five cases in which the amount of fines and costs assessed was greater than the fine and cost schedule authorized by the Municipal Judge. The Court Clerk indicated she had mistakenly used an outdated schedule on these cases. All fines and costs paid at the Traffic Violation Bureau (TVB) should be in accordance with the fee schedule authorized by the Municipal Judge to ensure fines and costs are fairly assessed to all violators and compliance with state law.
- E. Neither the police department nor the court adequately accounts for the numerical sequence and ultimate disposition of tickets issued. The police department does have a computer system where they enter all tickets issued, except parking tickets issued by non-commissioned police officers. The computer system has the capability of listing tickets in numerical sequence; however, no one reviews this information for missing ticket numbers, nor is the disposition of the tickets noted.

Without a proper accounting of the numerical sequence and ultimate disposition of all tickets issued, the police department and the court cannot be assured all tickets issued were properly submitted to the court for processing, voided, or not prosecuted.

A record of the ultimate disposition of each ticket should be maintained to ensure all tickets have been accounted for properly.

Conditions A, B.1., C, and D were also noted in our prior report of the municipal court.

**WE RECOMMEND** the city of Cottleville Municipal Court Division:

- A. Prepare and reconcile monthly open-items listings to the court's bank accounts. In addition, the shortage noted above should be investigated to determine the proper resolution of these monies.
- B.1. Establish a documented review of municipal court division records by an independent person.
  - 2. Account for the numerical sequence of all police department receipt slips and reconcile the composition of receipt slips issued to the composition of monies transmitted.
  - 3. Reconcile the composition of receipt slips issued to the composition of monies deposited.
- C. Require the disposition of all cases to be documented on the court docket and approved by the Municipal Judge.
- D. Assess fines and costs in accordance with the fee schedule authorized by the Municipal Judge.
- E. Work with the police department to ensure records are maintained to account for the numerical sequence and ultimate disposition of all tickets issued.

**AUDITEE'S RESPONSE**

- A. *A monthly listing of open items will be prepared and reconciled to the court bank accounts even though not required by statute.*

*The shortage, if appropriate, will be reimbursed by the General Fund.*

- B.1. *Although not required by law, the city will establish a documented review of the Municipal Court Division records by an independent person as is practical in the circumstances.*
  - 2. *Although not required by law, the city will account for the numerical sequence of all police department receipt slips and reconcile the composition of receipt slips to the composition of the monies transmitted.*

3. *Although not required by law, the city will reconcile the composition of receipt slips issued to the composition of monies deposited.*

*C,D,*

*&E. The city accepts these recommendations.*

This report is intended for the information of the management of the city of Cottleville and other applicable government officials. However, this report is a matter of public record and its distribution is not limited.

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